May 2006

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.18 Internet and Computer Solicitation

F. Pertinent Case Law

At the top of page 168, insert the following before the existing text in this subsection:

A defendant who uses a computer or the Internet to communicate with an individual the defendant believes to be a minor* in an effort to arrange a meeting at which the defendant expects the "minor" to fellate him may be bound over for trial for allegedly violating MCL 750.145d(1)(a) by attempting to engage in conduct prohibited by MCL 750.520d(1)(a)—third-degree criminal sexual conduct. *People v Cervi*, ___ Mich App ___, ___ (2006). Similarly, a defendant who uses a computer or the Internet to communicate with an individual the defendant believes to be a minor in an effort to arrange a meeting at which the defendant is to videotape the sexual activity that occurs between him and the "minor" may be bound over for trial for allegedly violating MCL 750.145d(1)(a) by attempting to engage in conduct prohibited by MCL 750.145c(2). *Cervi*, *supra* at ___.

*In this case, the minor was an undercover deputy sheriff posing as a minor.

In *Cervi*, the defendant met the "minor" through an instant-messaging service on the Internet. After the first contact, the defendant repeatedly contacted the "minor" and discussed meeting each other and the sexual conduct that would occur when they met. The defendant's communication with the "minor" constituted an attempt to commit third-degree criminal sexual conduct, an offense that triggers application of MCL 750.145d(1)(a) when the intended victim is a minor or the defendant believes the intended victim is a minor. *Cervi, supra* at ___. The Court further concluded that the defendant was properly charged with separate counts of violating MCL 750.145d(1)(a) for each time the defendant communicated on the Internet with the "minor" for the purpose of arranging a meeting to engage the "minor" in conduct prohibited by MCL 750.520d(1)(a). *Cervi, supra* at ___. Specifically, the Court stated:

> "[T]he prosecution properly can charge defendant under subsection 145d(1)(a) for each instance in which defendant used a computer to communicate with a perceived minor with the specific intent to engage in sexual penetration with someone he believed was between 13 and 16 years of age." *Cervi, supra* at ___.

In response to the defendant's request, the "minor" agreed to let the defendant videotape the sexual contact that was to take place when they met. According to the *Cervi* Court, these circumstances "support[] a reasonable inference that defendant communicated with [the "minor"] for the purpose of attempting, or with the specific intent to attempt, to arrange for, produce, or make 'child sexually abusive material.'" *Cervi, supra* at ___.

The defendant also contended that MCL 750.145d violated his right to free speech because it criminalized words alone. The *Cervi* Court disagreed and explained that MCL 750.145d "criminalizes communication with a minor or perceived minor with the specific intent to make that person the victim of one of the enumerated crimes." *Cervi, supra* at ___. The Court elaborated:

> "[T]he content of defendant's speech is more than mere words, because the content of the message combined with the sender's intent together comprise an invitation, and it is the act of issuing that invitation to a person the issuer believes is a child that is proscribed by law. However repugnant his words might be, the operative issue is not what defendant said, it is his act of saying them to a person he believed was a 14-year-old girl with the intent that she would accept his invitation to engage in a sexual encounter." *Cervi, supra* at ___.

CHAPTER 7
General Evidence

7.3 Evidence of Other Crimes, Wrongs, or Acts

E. Admissibility of Evidence That Defendant Committed Other Acts of Domestic Violence

Effective March 24, 2006, 2006 PA 78 enacted a statute authorizing the admission of evidence regarding a defendant's other acts of domestic violence. Immediately after the January 2006 update to page 342, add a new subsection (E) as indicated above and insert the following text:

Evidence that a defendant committed other acts of domestic violence is admissible in a criminal action against a defendant accused of committing an offense involving domestic violence. MCL 768.27b.* If admissible, such evidence may be introduced "for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403." MCL 768.27b(1). The statutory provisions of MCL 768.27b "do[] not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law." MCL 768.27b(3).

*Applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006.

Notice requirements apply to evidence sought to be admitted under MCL 768.27b. A prosecutor intending to introduce evidence admissible under this statute "shall disclose the evidence, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown." MCL 768.27b(2).

In addition to the notice requirement, there is a temporal requirement in MCL 768.27b. "Evidence of an act occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that admitting this evidence is in the interest of justice." MCL 768.27b(4).

For purposes of MCL 768.27b, the definition of "domestic violence" is substantially similar to the definition in MCL 400.1501(d), and by reference, to the definition in MCL 600.2157a(1)(b).* MCL 768.27b(5).

*See Section 7.15(A) for a detailed discussion.

CHAPTER 7

General Evidence

7.5 Testimonial Evidence of Threats Against a Crime Victim or a Witness to a Crime

D. Statutory Authority for the Admission of Threat Evidence in Cases Involving Domestic Violence

Effective March 24, 2006, and applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006, a declarant's statements are admissible under specific circumstances in criminal cases involving domestic violence. 2006 PA 79. On page 363, immediately before Section 7.6, add a new subsection as indicated above and insert the following text:

MCL 768.27c provides statutory authority for the admission under certain circumstances of a declarant's statement pertaining to injuries sustained by, or threats of injury to, the declarant. A declarant's statement may be admitted under MCL 768.27c if all of the following circumstances exist:

> "(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
>
> "(b) The action in which the evidence is offered under this section is an offense involving domestic violence.
>
> > **Note:** The definition of "domestic violence" in MCL 768.27c is substantially similar to the definition in MCL 400.1501(d), and by reference, to the definition in MCL 600.2157a(1)(b).* MCL 768.27c(5)(b).
>
> "(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.
>
> "(d) The statement was made under circumstances that would indicate the statement's trustworthiness.
>
> "(e) The statement was made to a law enforcement officer." MCL 768.27c(1).

*See Section 7.15(A) for a detailed discussion.

The statute includes, but does not limit, factors for determining whether a declarant's statement is trustworthy for purposes of MCL 768.27c(1)(d). To determine whether a statement is trustworthy, a trial court should consider:

> "(a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
>
> "(b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.
>
> "(c) Whether the statement is corroborated by evidence other than statements that are admissible only under this section." MCL 768.27c(2).

Notice requirements apply if a prosecutor intends to introduce evidence of a declarant's statement under MCL 768.27c:

> "(3) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown."

April 2006

Update: Sexual Assault Benchbook

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

Insert the following text after the May 2005 update to page 364:

In *People v Jones*, ___ Mich App ___, ___ (2006), the Court first affirmed that the admission of an unavailable witness's testimonial statement does not violate the Confrontation Clause if the defendant caused the witness to be unavailable. Concurring with *United States v Cromer*, 389 F3d 662 (CA 6, 2004), the *Jones* Court determined that because the witness's unavailability was procured by the defendant's wrongdoing, the defendant forfeited his constitutional right to confront that witness. In *Jones*, the only eyewitness to a shooting identified the defendant as the shooter in a statement to police. However, the witness refused to testify at trial regarding defendant's involvement in the shooting. At a separate hearing regarding his refusal to testify, the witness stated "that he feared retribution if he testified, particularly because certain individuals were present in the courtroom." *Jones, supra* at ___. The trial court admitted the witness's statement to police into evidence under MRE 804(b)(6). The Court of Appeals rejected defendant's assertion that the prosecutor failed to establish that defendant "engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness," as required by MRE 804(b)(6). The Court of Appeals concluded that evidence that members of a gang to which defendant belonged threatened the witness satisfied the rule's requirements.

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

B. Sentencing Guidelines

Insert the following text after the October 2003 update to page 455:

In the absence of any evidence that the defendant's criminal conduct on one occasion arose from his conduct on another occasion, when a defendant is sentenced for more than one conviction of first-degree criminal sexual conduct (CSC-1) and the penetrations forming the basis of each conviction occurred on different dates, those penetrations may not be counted when scoring OV 11 for any of the defendant's CSC-1 convictions. *People v Johnson*, ___ Mich ___, ___ (2006).

February 2006

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

E. Pertinent Case Law

4. Definition of Terms

Insert the following case summary after the first paragraph on page 136:

A person "produces" or "makes" child sexually abusive material when the person reproduces prohibited images by copying them to a recordable compact disc (CD-R). *People v Hill*, ___ Mich App ___, ___ (2006). In *Hill*, the defendant argued that he was improperly charged with violating MCL 750.145c(2) because he merely possessed child sexually abusive material. The defendant asserted that his conduct of copying images he had downloaded from an internet website onto CD-Rs was not the equivalent of producing child sexually abusive material; instead, the defendant argued that his copies on CD-Rs represented only the storage of child sexually abusive material. *Hill*, *supra* at ___. The circuit court disagreed and bound the defendant over on charges that he violated MCL 750.145c(2).

The Court of Appeals affirmed the circuit court's conclusion that "following the mechanical and technical act of burning images onto the CD-Rs, something new was created or made that did not previously exist" so that the defendant was properly charged with violating MCL 750.145c(2). *Hill, supra* at ___. The Court of Appeals noted that MCL 750.145c(1)(m) specifically defines "child sexually abusive material" as "any reproduction, copy, or print of [a prohibited] photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording." *Hill, supra* at ___. According to the *Hill* Court, notwithstanding the plain language of the statute that criminalizes the defendant's conduct,

"[t]he evidence reflects that defendant burned the illegal images and videos onto the CD-Rs, thereby placing child sexually abusive material on new storage devices, the CD-Rs, which material was compiled in a format and manner determined solely by defendant, considering that he personally burned and spliced particular picture and video files onto particular CD-Rs. The CD-Rs, as compiled by defendant, were defendant's own creations; he made child-pornography CD-Rs." *Hill, supra* at ___.

CHAPTER 3

Other Related Offenses

3.10 Disorderly Person (Common Prostitute/Window Peeper/Indecent or Obscene Conduct)

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of "listed offenses" in MCL 28.722(e). On page 143, change the citation in the second dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a "listed offense" under SORA. MCL 28.722(e)(*iii*).

> **Note:** MCL 750.335a(2)(b) is a new violation added by 2005 PA 300, effective February 1, 2006. MCL 750.335a(2)(b) states: "If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both."

CHAPTER 3

Other Related Offenses

3.11 Dissemination of Sexually Explicit Matter to Minors

A. Statutory Authority—Disseminating and Exhibiting

2. Statutory Exceptions

Effective February 1, 2006, 2005 PA 245 amended MCL 722.676(a) to qualify the exception for parents or guardians. Replace (a) in the quotation of MCL 722.676 near the bottom of the first page of the January 2004 update to page 144 with the following:

> "(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward unless the dissemination is for the sexual gratification of the parent or guardian."

CHAPTER 3
Other Related Offenses

3.16 Indecent Exposure

A. Statutory Authority and Penalties

Effective February 1, 2006, 2005 PA 300 amended MCL 750.335a, the statute defining the crime of indecent exposure. Replace the content of the March 2003 update to page 160 with the following text:

MCL 750.335a prohibits a person from knowingly making an open or indecent exposure of himself or herself or of another person. Specifically, MCL 750.335a states:

> "(1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.
>
> "(2) A person who violates subsection (1) is guilty of a crime, as follows:
>
> > "(a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both.
> >
> > "(b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
> >
> > "(c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life."

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of "listed offenses" in MCL 28.722(e). On page 161, change the citation in the first dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a "listed offense" under SORA. MCL 28.722(e)(*iii*).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

A. Who Must Register?

2. "Listed Offense"

Beginning on page 515, replace the content of this sub-subsection with the following text:

*As amended, effective February 1, 2006. 2005 PA 301.

A "listed offense" means any of the offenses found in MCL 28.722(e)(*i*)–(*xiv*):*

- Accosting, enticing or soliciting a child for immoral purposes, MCL 750.145a.
- Accosting, enticing or soliciting a child for immoral purposes, second offense, MCL 750.145b.
- Child sexually abusive activity, MCL 750.145c.
- Crimes against nature or sodomy, if a victim is an individual less than 18 years of age, MCL 750.158.

*Effective February 1, 2006.

- Indecent exposure when an individual is fondling his or her genitals, pubic area, buttocks, or, if the person is female, breast, if that individual was previously convicted of indecent exposure, MCL 750.335a(2)(b).*
- A third or subsequent violation of any combination of the following:
  - Disorderly person (indecent or obscene conduct), MCL 750.167(1)(f), or a local ordinance of a municipality substantially corresponding to MCL 750.167(1)(f).
  - Indecent exposure, MCL 750.335a(2)(a), or a local ordinance of a municipality substantially corresponding to MCL 750.335a(2)(a).
- Except for a juvenile disposition or adjudication, gross indecency between males if a victim is an individual less than 18 years of age, MCL 750.338.
- Except for a juvenile disposition or adjudication, gross indecency between females if a victim is less than 18 years of age, MCL 750.338a.

- Except for a juvenile disposition or adjudication, gross indecency between males and females if a victim is less than 18 years of age, MCL 750.338b.
- Kidnapping, MCL 750.349, if a victim is less than 18 years of age.
- Kidnapping child under the age of 14, MCL 750.350.
- Soliciting and accosting, MCL 750.448, if a victim is less than 18 years of age.
- Pandering, MCL 750.455.
- First-degree criminal sexual conduct, MCL 750.520b.
- Second-degree criminal sexual conduct, MCL 750.520c.
- Third-degree criminal sexual conduct, MCL 750.520d.
- Fourth-degree criminal sexual conduct, MCL 750.520e.
- Assault with intent to commit criminal sexual conduct, MCL 750.520g.
- Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.

  Note: The elements of this "catch-all" provision are: (1) the defendant must have been convicted of a state law violation or a municipal ordinance violation; (2) the state law or municipal ordinance violation must, "by its nature," constitute a "sexual offense"; and (3) the victim of the state law or municipal ordinance violation must be under 18. See *People v Meyers*, 250 Mich App 637, 655 (2002) (defendant's conviction under MCL 750.145d(1)(b) for using the internet to communicate with a person for the purpose of attempting to commit conduct proscribed under MCL 750.145a, satisfied the foregoing "catch-all" elements and required him to register under SORA, even though his exact conviction was not a "listed offense").

- An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in MCL 750.10a.
- An attempt or conspiracy to commit an offense described above.

  Note: In *Meyers, supra*, the Court of Appeals held that the defendant was required to register under the foregoing provision even though his exact conviction under MCL 750.145d(1)(b) was not a "listed offense," because he used the internet to communicate with a person for the purpose

of *attempting* to commit conduct proscribed by MCL 750.145a (accosting, enticing, or soliciting a child), which is a "listed offense" under SORA.

- An offense substantially similar to an offense described above under a law of the United States, any state, or any country or under tribal or military law.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

1. Yearly Verification (Misdemeanor Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(a) and eliminated the list of misdemeanor listed offenses found in MCL 28.725a(4)(a). Delete sub-subsection (1) in the October 2002 update to page 522. Near the bottom of page 522, change the title of sub-subsection (1) as indicated above and beginning with the paragraph at the bottom of page 522 and continuing on page 523, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are misdemeanors must verify his or her domicile or residence yearly in person, no earlier than January 1 and no later than January 15, at the local law enforcement agency, sheriff's department, or State Police post. MCL 28.725a(4)(a).

Under MCL 28.725a(4)(a), "'misdemeanor' means that term as defined in . . . MCL 761.1."

> **Note:** MCL 761.1(h) defines "misdemeanor" as "a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine."

2. Quarterly Verification (Felony Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(b) and eliminated the list of felony listed offenses found in MCL 28.725a(4)(b). Delete sub-subsection (2) in the October 2002 update to page 522. On page 523, change the title of sub-subsection (2) as indicated above and beginning with the first paragraph on page 523 and continuing on page 524, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are felonies must verify his or her domicile or residence quarterly in person, no earlier than the first day and no later than the fifteenth day of each April, July, October, and January, at the local law enforcement agency, sheriff's department, or State Police Post. MCL 28.725a(4)(b).

Under MCL 28.725a(4)(b), "'felony' means that term as defined in . . . MCL 761.1."

Note: MCL 761.1(g) defines "felony" as "a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony."

January 2006

Update: Sexual Assault Benchbook

CHAPTER 4

Defenses To Sexual Assault Crimes

4.5 Alibi

A. Statutory Notice Requirements

Effective January 1, 2006, MCR 6.201(A)(1) was amended. As amended, the rule requires disclosure on request of the names and addresses of all witnesses a party may call at trial. The amendment to MCR 6.201(A)(1) potentially broadens the disclosure requirement because a party's duty to disclose is no longer limited to those witnesses the party *intends* to call at trial.

Replace the second sentence of the last full paragraph near the bottom of page 211 with the following language:

MCR 6.201(A)(1) mandates disclosure, upon request of a party, of the names and addresses of all lay and expert witnesses a party may call at trial.

CHAPTER 4

Defenses To Sexual Assault Crimes

4.10 Insanity, Guilty But Mentally Ill, Involuntary Intoxication, and Diminished Capacity

B. "Guilty But Mentally Ill"

1. Accepting Pleas of "Guilty But Mentally Ill"

Effective January 1, 2006, MCR 6.303 was amended. On page 232, replace the quoted text immediately before sub-subsection (2) with the following text:

*As amended, effective January 1, 2006.

> "Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of MCR 6.302. In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill at the time of the offense to which the plea is entered. The reports must be made a part of the record." MCR 6.303.*

CHAPTER 5
Bond and Discovery

5.2 Interim Bond

A. Applicable Law

Replace the first sentence in the second paragraph on page 248 with the following language:

Where permitted by law, interim bond is allowed for both felony and misdemeanor cases in which a warrant has been issued. MCR 6.102(D).*

*As amended, effective January 1, 2006.

CHAPTER 5

Bond and Discovery

5.3 Denying Bond

Insert the following language after the first sentence of the paragraph following the first set of bullets on page 250:

A custody hearing under MCR 6.106(G)(1) may be requested by either the defendant or the prosecutor.*

*MCR 6.106(G)(1), as amended, effective January 1, 2006.

5.4 Procedures for Issuing Conditional Release Orders

B. Appointing Counsel for Defendant

1. Scope of Right to Appointed Counsel

Replace the second bullet near the bottom of page 251 with the following information:

- The court determines that it might sentence the defendant to a term of incarceration, even if suspended.*

*MCR 6.610(D)(2), as amended, effective January 1, 2006.

CHAPTER 5
Bond and Discovery

5.6 Contents of Conditional Release Orders

MCR 6.106(D)(2) was amended, effective January 1, 2006. Add the following new sub-subsection (m) to the quoted rule at the top of page 256 and reletter the remaining paragraphs accordingly:

> "(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved."*

*MCR 6.106(D)(2)(m), as amended, effective January 1, 2006.

CHAPTER 5
Bond and Discovery

5.10 Modification of Conditional Release Orders

A. Modification of Release Orders in Felony Cases

On page 260, replace the third bullet and its corresponding text with the following language:

*MCR 6.004(C), as amended, effective January 1, 2006.

- Unless the court finds by clear and convincing evidence that a defendant is likely to fail to appear at future proceedings or that a defendant is likely to be a danger to any other person or the community, MCR 6.004(C) requires the court to initiate modification of bond to allow pretrial release on personal recognizance in felony cases where the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode.*

B. Modification of Release Orders in Misdemeanor Cases

Add the following language to the text in the first bullet on page 261:

Release on personal recognizance is not required if "the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community." MCR 6.004(C), as amended, effective January 1, 2006.

Effective January 1, 2006, 2005 PA 184 eliminated MCL 780.815(2) and added four offenses to the list of "serious misdemeanors." On page 261, delete the reference to MCL 780.815(2) and replace the third sentence in the second bullet (the list of serious misdemeanors) with the following text:

Serious misdemeanors are defined in MCL 780.811(1)(a) to include assault and battery (including domestic assault), aggravated assault (including aggravated domestic assault), entry without permission, fourth-degree child abuse, contributing to the delinquency of a minor, accosting and soliciting a child, using the internet or a computer to make a prohibited communication, intentionally aiming a firearm without malice, discharging a firearm intentionally aimed at a person (with and without injury), indecent exposure, stalking, injuring a worker in a work zone, leaving the scene of a personal injury accident, operating a vehicle or vessel while under the influence or while impaired (if the violation results in property damage, physical injury, or death), and selling or furnishing liquor to a minor (if the violation results in physical injury or death).

CHAPTER 5

Bond and Discovery

5.11 Enforcement Proceedings After Warrantless Arrest for an Alleged Violation of a Release Condition

C. Hearing Procedures

Near the middle of page 264, replace the quoted text of MCR 6.106(I)(2)(a) with the following language:

> "(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond."*

*MCR 6.106(I)(2)(a), as amended, effective January 1, 2006. Additional amendments made to MCR 6.106 are not relevant here.

CHAPTER 5

Bond and Discovery

5.12 Enforcement Proceedings Where the Defendant Has Not Been Arrested for the Alleged Violation

Near the bottom of page 266, replace the quoted text of MCR 6.106(I)(2)(a) with the following text:

> "(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond."*

*MCR 6.106(I)(2)(a), as amended, effective January 1, 2006. Additional amendments made to MCR 6.106 are not relevant here.

CHAPTER 5

Bond and Discovery

5.13 Forfeiture of Bond Where Defendant Violates a Release Condition

Replace the two bullets at the top of page 268 with the following text:

- If the court revokes its release order and declares the bail money or the surety bond forfeited, it must mail notice of the revocation order immediately to the defendant at his or her last known address, and to any person who posted the defendant's bail or bond. MCR 6.106(I)(2)(a).*

*As amended, effective January 1, 2006.

- "If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of the release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, or if a surety bond was posted an amount not to exceed the full amount of the surety bond, and costs of the court proceedings. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court." MCR 6.106(I)(2)(b).*

*As amended, effective January 1, 2006.

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

Effective January 1, 2006, MCR 6.201(B)(2) and (3) were amended. Replace the second and third bullets near the top of page 269 with the following text:

- Any police report and interrogation records concerning the case, except those portions of a report concerning a continuing investigation;

- Any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if the person is not a prospective witness at trial;

MCR 6.201(A)(1)–(6) were also amended, effective January 1, 2006. Near the middle of page 269, replace the two-line introduction to the group of six bullets and the text of all six bullets with the following text:

Discovery applies to all parties in felony cases. Under MCR 6.201(A)(1)–(6), a party must disclose to other parties, upon request, any of the following:

- The names and addresses of all lay and expert witnesses that may be called at trial, or in the alternative, a party may disclose the name of the witness and make the person available for interview by the opposing party. The witness list may be amended without leave of the court up to 28 days before trial.
- Any written or recorded statement concerning the case made by a lay witness who may be called at trial, except that a defendant is not required to disclose his or her own statement.
- The curriculum vitae of an expert witness who may be called at trial, and either a report by that expert or a written description of the substance of that expert's proposed testimony, the expert's opinion, and the information on which the expert's opinion is based.
- Any criminal record that may be used at trial to impeach a witness.
- For any witness who may be called at trial, a list or description of criminal convictions known to the defense attorney or the prosecuting attorney concerning that witness.
- A description of and an opportunity to inspect any tangible physical evidence, including any document, photograph, or other paper, that may be introduced at trial. On request, a party must provide copies of any document, photograph, or other paper. The party required to provide those copies may request a hearing on any question of the costs of reproduction. For good cause, a party may be given the opportunity to test, without destruction, any tangible physical evidence.

CHAPTER 5
Bond and Discovery

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

Insert the following text after the July 2003 update to page 270:

Amendments to MCR 6.201, effective January 1, 2006, completely changed the language used in MCR 6.201(A)(3), the court rule at issue in *People v Phillips*, 468 Mich 583 (2003). As amended, MCR 6.201(A)(3) requires a party to disclose upon request

> "the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion[.]"

The amended subrule now requires a party to provide an expert's report or a written description of the expert's proposed testimony. Implicit in the amended language is a party's obligation to compose a written description of the substance of an expert's proposed testimony if a report by the expert is not available. In addition to the expert's report or a written description of the expert's proposed testimony, a party must disclose the expert's opinion and the basis for that opinion. Although a specific method is not indicated, the amended language of MCR 6.201(A)(3) also implies that the expert's opinion and basis for the opinion must be disclosed to the requesting party.

C. Limitations on Discovery

1. Depositions and Pretrial Witness Interviews

Insert the following information at the beginning of sub-subsection (C)(1) on page 271:

As an alternative to the mandatory disclosure of a witness' name and address, MCR 6.201(A)(1), as amended, permits a party to "provide the name of the witness and make the witness available to the other party for interview."*

*Effective January 1, 2006.

CHAPTER 5

Bond and Discovery

5.14 Discovery in Sexual Assault Cases

D. Discovery Violations and Remedies

2. Remedies

Replace the second sentence of the first paragraph on page 279 with the following text:

*As amended, effective January 1, 2006.

Under MCR 6.201(J),* a court has the authority to order the offending party "to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances."

Insert the following language before the last paragraph on page 279:

*Effective January 1, 2006.

MCR 6.201(J)* "encourages" a party, at the earliest opportunity, to bring before the court any questions of noncompliance. A court has the authority to impose appropriate sanctions on counsel for a "[w]ilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto[.]" *Id*. A court's order entered under the provisions of MCR 6.201 may be reviewed only for an abuse of discretion. *Id*.

CHAPTER 6

Specialized Procedures Governing Preliminary Examinations and Trials

6.4 Speedy Trial Rights

A. Defendant's Right to Speedy Trial

1. Constitutional Right to Speedy Trial

Insert the following language at the end of the paragraph at the bottom of page 286:

"Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice." MCR 6.004(A), as amended, effective January 1, 2006.

CHAPTER 6

Specialized Procedures Governing Preliminary Examinations and Trials

6.4 Speedy Trial Rights

A. Defendant's Right to Speedy Trial

3. 180-Day Rule for Defendants Not in Custody of Department of Corrections

Near the top of page 288, change the title of the sub-subsection as indicated above and replace the first paragraph with the following text:

*As amended, effective January 1, 2006.

Unless the court determines, by clear and convincing evidence, that the defendant presents a danger to the community or any other person, or that the defendant is likely to fail to appear for future proceedings, MCR 6.004(C) requires that a defendant be released on personal recognizance after he or she has been incarcerated for a certain period of time.* Specifically, MCR 6.004(C) requires that a defendant in a **felony** case be released on personal recognizance after being incarcerated for 180 days or more (to answer for the same crime, a crime based on the same conduct, or a crime arising from the same criminal episode). *Id*. In a **misdemeanor** case, the defendant must be released on personal recognizance after being incarcerated for 28 days or more (to answer for the same crime, a crime based on the same conduct, or a crime arising from the same criminal episode). *Id*. Pursuant to MCR 6.004(C)(1)–(6), the following periods of delay must be excluded in computing the 180-day or 28-day periods:

4. The 180-Day Rule for Defendants in Custody of Department of Corrections

Beginning with the first paragraph and continuing through the quoted text of MCR 6.004(D)(2) on page 289, delete the existing text and insert the following:

*Crimes committed by an inmate during incarceration or during an escape from incarceration.

Except for the crimes exempted by MCL 780.131(2),* MCR 6.004(D)(1) requires a prosecutor to bring an inmate to trial within 180 days after the Department of Corrections notifies the appropriate prosecuting attorney of the inmate's location and requests final disposition of the pending matter. Specifically, MCR 6.004(D)(1) requires that an inmate be brought to trial within 180 days

> "after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail."*

*MCR 6.201(D)(1), as amended, effective January 1, 2006.

MCR 6.004(D)(2) specifies the remedy for 180-day rule violations:

> "In the event that action is not commenced on the matter for which request for disposition was made as required in subsection (1), no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."*

*MCR 6.004(D)(2), as amended, effective January 1, 2006.

CHAPTER 7

General Evidence

7.3 Evidence of Other Crimes, Wrongs, or Acts

D. Admissibility of Evidence That Defendant Committed Other "Listed Offenses"

Effective January 1, 2006, 2005 PA 135 added MCL 768.27a, which governs the admissibility of evidence of sexual offenses against minors. On page 342, insert the new subsection (D) as indicated above and insert the following text after the new subsection:

Evidence that a defendant previously committed a "listed offense" against a minor is admissible against that defendant in a subsequent criminal case in which the defendant is accused of committing a "listed offense" against a minor. MCL 768.27a states in part:

*Substantially similar to MRE 404(b)(1).

> "(1) Notwithstanding [MCL 768.]27,* in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered."

*See Section 11.2(A)(2) for a description of "listed offenses."

For purposes of MCL 768.27a, a "listed offense" means any of the offenses found in MCL 28.722.*

CHAPTER 7
General Evidence

7.4 Selected Hearsay Rules (and Exceptions)

D. Statements of Existing Mental, Emotional, or Physical Condition—MRE 803(3)

Insert the following text before the June 2004 update to page 346:

In *People v Bauder*, ___ Mich App ___, ___ (2005), the Court of Appeals relied heavily on the reasoning in *People v Ortiz** in affirming the trial court's admission of evidence under MRE 803(3) where the victim's statements were "remarkably similar" to those of the victim in *Ortiz*. In *Bauder*, the defendant admitted killing the victim but argued at trial that the murder was not premeditated or deliberate. According to the *Bauder* Court:

*249 Mich App 297 (2002).

> "[The victim] had said that she was fearful of defendant, that defendant had threatened to kill her, her son, and her ex-husband, that she was tired of defendant's incessant demands for all kinds of sex and defendant's forcing sex if she refused, that she wanted to end her relationship with defendant and reconcile with her ex-husband, that defendant was jealous of her ex-husband, and that defendant stalked and beat her. These statements were evidence of the victim's state of mind, her fear, her intent to resist sex, and her intent to end her relationship with defendant.
>
> * * *
>
> "The [victim's statements were] generally admissible under MRE 803(3) to show the victim's state of mind . . . . The evidence was therefore relevant to a motive for murder, and indirectly relevant to defendant's intent and to whether defendant acted with premediation and deliberation." *Bauder, supra* at ___ (footnote omitted).

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

Insert the following text after the April 2005 update to page 364:

See also *People v Bauder*, ___ Mich App ___, ___ (2005) (citing *Walker* and *Geno*,* the Court of Appeals held that the victim's statements to friends, co-workers, and defendant's relatives in the weeks before her death were not testimonial statements and their admission did not violate defendant's right to confrontation).

People v Walker, 265 Mich App 530 (2005), lv gtd 472 Mich 928 (2005), and *People v Geno*, 261 Mich App 624 (2004).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

E. Probation

2. Probationable Offenses; Exceptions

Add the following text before the **Note** on page 459:

Except for the non-probationable offenses in MCL 771.1 and as otherwise provided by law, and subject to the requirements of MCL 771.2a(6)–(11), an individual convicted of a "listed offense" may be placed on probation "for any term of years but not less than 5 years." MCL 771.2a(5).*

*Effective January 1, 2006. 2005 PA 126. See Section 11.2(A)(2) for a description of "listed offenses."

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

E. Probation

4. Maximum Duration of Probation For Sex Crimes

Add the following text after the dashed information following the first bullet on page 460:

– Any of the "listed offenses" (except as otherwise provided by law, and subject to the requirements of MCL 771.2a(6)–(11)).*

*Effective January 1, 2006. 2005 PA 126. See Section 11.2(A)(2) for a description of "listed offenses."

5. Contents of Probation Orders

Add the following information on page 461 before **"Delayed Sentencing"**:

Conditions of probation involving "student safety zones." Additional conditions of probation must be ordered when an individual is placed on probation under MCL 771.2a(5) after conviction of a "listed offense."* Subject to the provisions in MCL 771.2a(7)–(11), discussed below, the court must order an individual placed on probation under MCL 771.2a(5) **not** to do any of the following:

*MCL 771.2a(6), effective January 1, 2006. 2005 PA 126. See Section 11.2(A)(2) for a description of "listed offenses."

- Reside within a student safety zone, MCL 771.2a(6)(a).
- Work within a student safety zone, MCL 771.2a(6)(b).
- Loiter within a student safety zone, MCL 771.2a(6)(c).

A "student safety zone" is defined as the area that lies 1,000 feet or less from school property. MCL 771.2a(12)(f).*

*Effective January 1, 2006. 2005 PA 126.

For purposes of MCL 771.2a, "school" and "school property" are defined in MCL 771.2a(12)* as follows:

*Effective January 1, 2006. 2005 PA 126.

> "(d) 'School' means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

> "(e) 'School property' means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:
>
> "(*i*) It is used to impart educational instruction.
>
> "(*ii*) It is for use by students not more than 19 years of age for sports or other recreational activities."

Individuals exempted from probation under MCL 771.2a(5). Even if a person was convicted of a "listed offense," MCL 771.2a(11)* permits the court to exempt that person from being placed on probation under subsection (5) if either of the following circumstances apply:

*Effective January 1, 2006. 2005 PA 126.

> "(a) The individual has successfully completed his or her probationary period under [the youthful trainee act] for committing a listed offense and has been discharged from youthful trainee status.
>
> "(b) The individual was convicted of committing or attempting to commit a violation solely described in [MCL 750.520e(1)(a)*], and at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim."

*Fourth-degree CSC where the individual is at least 5 years older than the victim and the victim is at least 13 years of age but less than 16 years of age.

Exceptions to the mandatory probation conditions concerning "school safety zones." Under the circumstances described below, the prohibitions found in MCL 771.2a(6)(a)–(c) do not apply to individuals convicted of a "listed offense."

Residing within a student safety zone. The court shall not prohibit an individual on probation after conviction of a "listed offense" from residing within a student safety zone, MCL 771.2a(6)(a), if any of the following apply:*

*MCL 771.2a(7)(a)–(c), effective January 1, 2006. 2005 PA 126.

> "(a) The individual is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends secondary or postsecondary school in conjunction with that school attendance.
>
> "(b) The individual is not more than 26 years of age, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. However, an individual described in this subdivision shall be ordered not to

> initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.
>
> "(c) The individual was residing within that student safety zone at the time the amendatory act that added this subdivision was enacted into law. However, if the individual was residing within the student safety zone at the time the amendatory act that added this subdivision was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors within that student safety zone. This subdivision does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order."

*Effective January 1, 2006. 2005 PA 126.

In addition to above exceptions, the prohibition against residing in a student safety zone, MCL 771.2a(6)(a), does not prohibit a person on probation after conviction of a "listed offense" from "being a patient in a hospital or hospice that is located within a student safety zone." MCL 771.2a(8).* The hospital exception does not apply to a person who initiates or maintains contact with a minor in that student safety zone. *Id*.

*Effective January 1, 2006. 2005 PA 126.

Working within a student safety zone. If a person on probation under MCL 771.2a(5) was working within a student safety zone at the time the amendatory act adding these prohibitions was enacted into law, he or she cannot be prohibited from working in that student safety zone, MCL 771.2a(6)(b). MCL 771.2a(9).* If a person was working within a student safety zone at the time of this amendatory act, "the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone." *Id*. As with MCL 771.2a(7)(c), for good cause shown, a court is not prohibited by MCL 771.2a(9) from allowing the probationer contact with any minors named in the probation order and as specified in the probation order. MCL 771.2a(9).

*Effective January 1, 2006. 2005 PA 126.

If an individual on probation under MCL 771.2a(5) only intermittently or sporadically enters a student safety zone for work purposes, the court shall not impose the condition in MCL 771.2a(6)(b) that would prohibit the person from working in a student safety zone. MCL 771.2a(10).* Even when a person intermittently or sporadically works within a student safety zone, he or she shall be ordered "not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone." *Id*. For good cause shown and as specified in the probation order, the court may allow the person contact with any minors named in the order. *Id*.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

C. Post-Registration Change of Status

1. In-State Changes

Effective January 1, 2006, 2005 PA 123 amended MCL 28.725(1)(a) to also require an individual to make the necessary notifications within 10 days of *vacating* his or her residence. Replace the first bullet on the top of page 519 with the following text:

- The individual changes or vacates his or her residence, domicile, or place of work or education.*

*MCL 28.725(1)(a), as amended. Effective January 1, 2006.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

*Formerly subsection (K). Relettered after the addition of new subsection (I) in the October 2004 update to page 526.

L. Registration Violation Enforcement; Venue and Penalties*

2. Penalties

Effective January 1, 2006, MCL 28.729 was amended to provide specific penalties based on the number of times an individual violates MCL 28.725a, other than failure to pay the fee required by section 5a(7). 2005 PA 132. Replace the first paragraph of the October 2004 update to page 528 with the following text:

♦ **Failure to Comply with Yearly or Quarterly Verification**

An individual with no prior convictions for a violation of SORA who fails to comply with the requirements of MCL 28.725a, except for a failure to pay the fee required in MCL 28.725a(7), is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a maximum fine of $1,000.00 or both. MCL 28.729(2)(a).

An individual having one prior conviction for a violation of SORA who fails to comply with the requirements of MCL 28.725a, except for a failure to pay the fee required in MCL 28.725a(7), is guilty of a misdemeanor punishable by imprisonment for not more than one year or a maximum fine of $2,000.00 or both. MCL 28.729(2)(b).

An individual having two or more prior convictions for a violation of SORA who fails to comply with the requirements of MCL 28.725a, except for a failure to pay the fee required in MCL 28.725a(7), is guilty of a felony punishable by imprisonment for not more than four years or a maximum fine of $2,500.00 or both. MCL 28.729(2)(c).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

N. Student Safety Zones

Effective January 1, 2006, 2005 PA 121 and 127 added new provisions to the Sex Offenders Registration Act (SORA). The new provisions divide the SORA into three articles, add a new article criminalizing a registrant's residing, loitering, or working in a "student safety zone," and establish penalties for violations of the new prohibitions. On page 531, immediately before Section 11.3, insert new subsection (N) as indicated above and insert the following text:

Prohibitions on residing, working, or loitering in a "student safety zone." Except as explained below, an individual required to be registered under SORA shall not reside, work, or loiter within a "student safety zone." MCL 28.734(1)(a)-(b) and MCL 28.735(1). A "student safety zone" is "the area that lies 1,000 feet or less from school property." MCL 28.733(f). MCL 28.733 also contains definitions of "loiter," "school," and "school property." See MCL 28.733(b), (d), and (e). A first violation of MCL 28.734(1) or MCL 28.735(1) is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both. A second or subsequent violation is deemed a felony punishable by imprisonment for not more than two years or a fine of not more than $2,000.00, or both. MCL 28.734(2) and MCL 28.735(2). An individual may be charged with, convicted of, and punished for a violation of MCL 28.734 or 28.735 and any other violation committed by the individual while violating MCL 28.734 or 28.735.

An individual who resides in a student safety zone must change his or her residence to a location outside the student safety zone within 90 days after he or she is sentenced for a conviction that requires registration. However, the individual must not initiate or maintain contact with a minor within that student safety zone during this 90-day period. MCL 28.735(4).

Exemptions from criminal prohibitions. The offenders described below are exempt from the criminal prohibitions on residing or working within a student safety zone. These exemptions are contained in MCL 28.734(3), MCL 28.735(3), and MCL 28.736. However, offenders required to register under SORA must not loiter in a student safety zone, and even if the offender falls under one of the exemptions listed below, he or she must not initiate or maintain contact with a minor in a student safety zone except as noted below. MCL 28.734(3) and MCL 28.735(3).

The following are exempted from the prohibitions:

- An offender who is not more than 19 years old, attends secondary or postsecondary school, and resides with his or her parent or guardian. The offender may initiate or maintain contact with a minor with whom he or she attends school in conjunction with that attendance. MCL 28.735(3)(a).

- An offender who is not more than 26 years old, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. The offender may initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance. MCL 28.735(3)(b).

- An offender who was residing within a student safety zone on January 1, 2006. MCL 28.735(3)(c).

- An offender who is a patient in a hospital or hospice located in a student safety zone. MCL 28.735(3)(d).

- An offender who resides in a prison, jail, juvenile facility, or other correctional facility within a student safety zone or who is a patient in a mental health facility under a commitment order. MCL 28.735(3)(e).

- An offender who was working in a student safety zone on January 1, 2006. MCL 28.734(3)(a).

- An offender whose place of employment is within a student safety zone because a school is established or relocates there. MCL 28.734(3)(b).

- An offender who only intermittently or sporadically enters a student safety zone for purposes of work. MCL 28.734(3)(c).

- An offender "convicted" of not more than one of the following offenses:*

  - An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) if either of the following applies:

    - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or

    - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.736(1)(a).

*Note that all but the last of these offenses make an offender eligible to petition for exemption from registration under SORA. See the October 2004 update to Section 11.2 that added a new subsection (I).

- An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g if either of the following applies:

  - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or

  - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.736(1)(b).

- An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense and has been discharged from youthful trainee status. MCL 28.736(1)(c).

- An individual convicted of committing or attempting to commit a violation of MCL 750.520e(1)(a) who at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than five years older than the victim.